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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marcus P., a Person  
Coming Under the Juvenile  
Court Law.

B292348  
(Los Angeles County  
Super. Ct. No.  
18CCJP04408)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

N.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Rashida A. Adams, Judge. Affirmed.

Patricia G. Bell, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles,  
Assistant County Counsel, and Stephen D. Watson, Deputy  
County Counsel, for Plaintiff and Respondent.

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N.C. (Mother) challenges the jurisdictional findings and dispositional order declaring four-year-old Marcus a dependent of the juvenile court pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivisions (a) and (b)(1), and removing him from Mother's care. Mother contends there is insufficient evidence to support the juvenile court's findings she physically abused Marcus and failed to supervise and protect him.<sup>2</sup> We affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

### *A. The Prior Referrals*

On October 26, 2016 the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging domestic violence between Mother and Mark P. (Father). Mother and Father denied any domestic violence in the home, or any abuse or neglect of Marcus. The social worker did

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Mother does not raise any issues relating to the dispositional order, instead focusing only on the evidence supporting the jurisdictional findings. Although Mother also lists the July 17, 2018 detention order in her notice of appeal, Mother also does not address that issue in her brief.

not see any marks or bruises on Marcus, and closed the emotional abuse referral as inconclusive.

On May 26, 2017 the Department received another referral alleging the parents were arguing and Mother assaulted then two-year-old Marcus. The reporting party stated Mother shouted at Marcus and pulled his arm. A security guard saw the incident from across the street and approached the family. Father left the scene, and Mother and Marcus later walked southbound. The reporting party found Mother and Marcus four blocks away and spoke with Mother. Mother said she argued with Father, but denied hitting Marcus. After receiving Mother's permission, the reporting party checked Marcus and did not observe any visible marks or bruises. Marcus told the reporting party he was not fearful of Mother and denied any physical abuse or discipline. A social worker closed the referral as inconclusive.

On October 13, 2017 the Department received a referral alleging Mother hit Marcus several times while they were at the Department of Public Social Services (DPSS) office. Mother was applying for housing and became upset about the process. Marcus was playing behind a booth in a restricted area, and someone told Mother to get him. Mother hit Marcus on his hands five to six times, and he screamed and yelled. Mother lifted Marcus by the arm and took him outside the lobby. When Mother returned, she yelled and cursed about DPSS not giving her money for housing. Social worker Ariel Pitts investigated the referral and did not observe any marks or bruises on Marcus. Mother did not cooperate with Pitts during the investigation. Pitts concluded the physical abuse allegations were inconclusive because Marcus refused to provide a statement to her.

B. *The Current Referral and Investigation*

On June 7, 2018 a DPSS staff member called the Department to report Mother physically abused Marcus. Mother and Marcus were at the DPSS office to obtain homeless assistance, and Marcus was “hyperactive.” The staff member heard Mother tell Marcus, “I’m gonna whoop you” and yell “shut up” to him several times. The staff member reported Mother is “a very angry person in general and is very angry towards DPSS staff when she comes in to the office.”

The staff member reported a DPSS client, Cristina, saw Mother shake and hit Marcus, and reported the incident to DPSS staff. Cristina wrote and signed an affidavit in Spanish describing the incident. A Department employee later translated Cristina’s affidavit, which states, “I was waiting in line and a lady of color took her child by the hand and shook him, hit him really hard 6/7/18 1:30 p.m. [E]veryone was looking. No one dared to say anything to not have problems with that attitude[,] but yes if this is where you protect children this worries me much what they do at home to the child[,] [A] child of 5 to 7 years[,] skinny[,] was not mischievous[,] was only acting like a regular child of his age. Hopefully something can be done with this injustice.”

The DPSS staff member did not see any injuries on Marcus, but noted Mother and the child left after the incident.

In a June 11, 2018 interview, the DPSS staff member said Mother was very aggressive towards Marcus and he seemed afraid of her. The staff member stated she and other staff members had concerns about Mother’s behavior towards Marcus.

Social worker Amber Jurado had difficulty contacting Mother because Mother was homeless and using a DPSS address.

On June 26, 2018 Mother called the Department in response to an earlier letter. Mother said she had been a foster child herself and did not abuse Marcus. She stated the calls against her were “bogus.” Mother also sent an e-mail denying she neglected or abused Marcus. Mother stated she did not want to meet with the social worker; she “just want[ed] to be left alone.” She added she intended to file a complaint against the Department for harassment. On June 27, 2018 Mother spoke with Jurado by telephone. Mother declined to meet in person, stating her “haters” were making calls lying about her abuse of Marcus. Mother refused to disclose her whereabouts.

On July 13, 2018 Jurado informed Mother of the date for the detention hearing. Mother again denied the physical abuse allegations. She told Jurado she was not going to attend the detention hearing, and the Department could “kiss her ass.” However, three days later Mother told social worker Vilma Hernandez during a telephone call that she would attend the hearing. Mother told Hernandez, “This began two weeks ago. At first I was in refusal to meet with the social worker. This is not the first time DPSS has called in about me physically abusing my son. On Friday I spoke to an acting supervisor and told her that I would be willing to meet with the social worker in order for them to see my son and [see] that he is not being abused or neglect[ed]. I never hit him or pinched him. They assume I abused him. When I go to the DPSS office my son cannot sit still. If I try to discipline him they call this in so I let him run around the office. He is a boy and he becomes agitated. Then the people from the DPSS office come and tell me to get my son but they don’t like the way I am trying to discipline him. . . . I will tell you that it was ironic that on Friday he fell on his face. He had a scrap[e] and he

has been picking at the scab. I have been applying aloe and Neosporin.”

C. *The Petition and Detention*

On July 16, 2018 the Department filed a petition on behalf Marcus pursuant to section 300, subdivisions (a) and (b)(1). Counts a-1 and b-1 of the petition are identical and allege, “On 06/07/2018 [Mother] physically abused the child by forcibly shaking the child’s body and striking the child’s body. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child by the mother endanger the child’s physical health and safety and place the child at risk of serious physical harm, damage, danger and physical abuse.”

At the July 17, 2018 detention hearing, the juvenile court detained Marcus and granted Mother monitored visits for a minimum of three times per week for three hours each visit. Mother was upset about the orders and told the court, “I’m not complying with anything. You took my son on a racist merit. I’m going to go contact the news, and I’m going to the Board of Supervisors. I did not hit or abuse or neglect or do anything to my son whatsoever.” Mother added, “You have ruined my life. You’re not going to succeed this time. You’re going to pay this time. Millions for taking my son, bitch.”

D. *The Jurisdiction and Disposition Report*

The August 3, 2018 jurisdiction and disposition report indicated the whereabouts of Mother and Father were unknown. Therefore, social worker Stephanie Santiago was unable to interview either of them for the report. However, Santiago

interviewed Marcus, who stated, “My mother is mean and I don’t want to see her. . . . [She] would yell at me a lot and say mean things.” He stated, “[M]other whoops me with a belt and cords. . . . Sometimes I would get hit in the face and it would hurt.” He reported “that while with mom dog(s) would bite him,” and showed Santiago a scar on his left wrist. When Mother yelled at him to stop crying and he could not stop, she “would close the door so he could cry alone and monster[s] were going to him in that room.” Marcus stated he had a scar above his left eye, and he “got [his] ass busted for being in a basket.” He and the basket fell over; however, he did not explain how the basket tipped over. Marcus also did not clarify whether the scar was from the fall.

E. *The Jurisdiction Hearing*

At the August 7, 2018 jurisdiction hearing, the juvenile court sustained the allegations in the petition under section 300, subdivisions (a) and (b)(1). The court explained, “The evidence before the court indicates multiple individuals witnessing an incident at the DPSS office regarding aggressive physical acts by the mother on the child. While the court understands the arguments of Mother’s counsel regarding the questioning and credibility and reliability of the statements given that . . . the individuals are not identified by name, they are corroborated by the child’s statements. While the child makes statements regarding monsters, which is understandable, given his age[,] [h]e very specifically told the social worker that the mother hit him with a belt and cords. And I think the only reasonable interpretation of the statement regarding him getting hit in the face, and it would hurt is that Mother was doing the hitting. [¶]

There have been previous referrals, which are further corroborative evidence in that they report incidents similar to the one from June.”

F. *The Disposition Hearing*

At the August 28, 2018 disposition hearing, the juvenile court removed Marcus from Mother’s custody. The court ordered the Department to provide Mother with family reunification services including transportation assistance and funding for programs for Mother. The court ordered Mother to attend parenting and anger management classes, and individual counseling to address case issues. The court ordered Marcus to have an attention-deficit hyperactivity disorder (ADHD) assessment, individual counseling to address case issues, and conjoint counseling with Mother if recommended by his therapist. The court granted monitored visits for Mother for a minimum of two times a week for two hours each visit, with the Department having discretion to liberalize visitation.

## DISCUSSION

A. *Standard of Review*

We review the juvenile court’s jurisdictional findings for substantial evidence in light of the whole record. (*In re I.C.* (2018) 4 Cal.5th 869, 892 [“the evidence supporting the jurisdictional findings must be considered “in the light of the whole record” to determine whether it discloses substantial evidence”]; *In re R.T.* (2017) 3 Cal.5th 622, 633 [“In reviewing the jurisdictional findings and disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports



them.”].) Substantial evidence is evidence which is reasonable, credible, and of solid value. (*In re I.C.*, at p. 892; *In re D.B.* (2018) 26 Cal.App.5th 320, 328.) We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court, and adhere to the principle that issues of fact and credibility are the province of the juvenile court. (*In re R.T.*, at p. 633; *In re I.J.* (2013) 56 Cal.4th 766, 773.) “The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.” (*In re D.B.*, at pp. 328-329; accord, *In re Travis C.* (2017) 13 Cal.App.5th 1219, 1225.)

B. *Substantial Evidence Supports the Jurisdictional Finding Under Section 300, Subdivision (a)*

The juvenile court has jurisdiction over a child if the Department establishes by a preponderance of the evidence that allegations made pursuant to section 300 are true. (§ 355, subd. (a); *In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Section 300, subdivision (a), authorizes a juvenile court to exercise dependency jurisdiction over a child if “[t]he child has suffered, or there is substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent.”<sup>3</sup> “The court need not wait until a child is abused

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<sup>3</sup> Section 300, subdivision (a), provides further, “For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and

or injured to assume jurisdiction and take steps necessary to protect the child.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.)

Mother contends there is insufficient evidence Mother physically abused Marcus or there was a substantial risk she might abuse him in the future to support the juvenile court’s jurisdictional finding under section 300, subdivisions (a).<sup>4</sup> We conclude otherwise. A DPSS client witnessed Mother shake and hit Marcus “really hard” while waiting in line at the DPSS office

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age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.”

<sup>4</sup> Mother also contends there was insufficient evidence to support the juvenile court’s jurisdictional finding under section 300, subdivision (b)(1). Section 300, subdivision (b)(1), provides for dependency jurisdiction when “[t]he child has suffered, or there is substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . .” Because we conclude substantial evidence supports the juvenile court’s jurisdictional findings under section 300, subdivision (a), we do not reach whether the evidence also supports the court’s jurisdictional findings under section 300, subdivision (b)(1). (*In re I.J.*, *supra*, 56 Cal.4th at pp. 773-774 [“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.”]; accord, *In re Francisco D.* (2014) 230 Cal.App.4th 73, 80.)

and wrote an affidavit describing the incident. Mother contends the affidavit is insufficient evidence to support jurisdiction because Mother is described only as “a lady of color” and Marcus is described as “a child of 5 to 7 years,” although he was three at the time of the incident. But the affidavit is corroborated by the DPSS staff member who reported Mother had yelled “shut up” and threatened to “whoop” Marcus in the past. The staff member also stated Mother was very aggressive towards Marcus and he appeared afraid of her. Staff members had concerns about Mother’s behavior towards Marcus. The reporting staff member said Mother was “a very angry person in general and is very angry towards DPSS staff when she comes in to the office.” Mother’s anger was apparent at the detention hearing, when Mother directed angry comments at the juvenile court after it detained Marcus from her, stating, “you’re going to pay this time. Millions for taking my son, bitch.”

Marcus’s statements to social worker Rodriguez also support the jurisdictional findings.<sup>5</sup> Marcus stated, “My mother is mean and I don’t want to see her.” He said Mother “would yell at me a lot and say mean things.” Marcus reported that “mother

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<sup>5</sup> Four-year-old Marcus’s hearsay statements about Mother’s physical abuse of him are corroborated by the DPSS client who witnessed Mother shaking and hitting him, the DPSS staff member who heard Mother threaten to “whoop” him and saw Mother being “very aggressive” towards him, and two prior referrals alleging physical abuse by Mother. This case is distinguishable from *In re I.C.*, in which the jurisdictional finding of sexual abuse was based solely on a three-year-old child’s hearsay statements and many of the child’s statements were unbelievable or confusing. (*In re I.C.*, *supra*, 4 Cal.5th at pp. 875, 893, 896.)

whoops me with a belt and cords.” He also said, “Sometimes I would get hit in the face and it would hurt.”

Mother questions the veracity of Marcus’s statements, claiming he is a four-year-old with an active imagination and an unreliable reporter. Mother argues there was no evidence Mother and Father “fight all the time” and Father knocked Mother’s two teeth out, as reported by Marcus after the jurisdictional hearing. But there was a prior referral alleging domestic violence between Father and Mother on October 26, 2016, which was closed as inconclusive after the parents denied the allegations. Although Mother is correct there is no corroborating evidence Father knocked out Mother’s teeth, Mother did not present evidence showing this did not happen.<sup>6</sup>

Mother also points to Marcus’s statement that Mother placed him in a room to cry alone and there were monsters in the room with him. While a four-year-old child may believe monsters are in the room with him when he is left crying alone, this does not mean he made up statements about the physical abuse. As the juvenile court found, “While the child makes statements regarding monsters, which is understandable, given his age[,] [h]e very specifically told the social worker that the mother hit him with a belt and cords.” As the Supreme Court observed in *In re I.C.*, “Courts evaluating abuse allegations must keep in mind that a child’s verbal and cognitive limitations may prevent [the child] from providing an account of [his or] her abuse that is as

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<sup>6</sup> Mother also points to Marcus’s random statement after the jurisdictional hearing (on the way to a monitored visit) that “there were always parts of the car missing” to show he was not a reliable reporter. But this observation, whether true or not, has no bearing on whether Mother physically abused him.

coherent and consistent as we might expect from an adult. [Citation.] A child's account may reflect uncertainty, and may even contain some contradictions, and nevertheless warrant the court's trust." (*In re I.C.*, *supra*, 4 Cal.5th at p. 896.)

Mother also contends Marcus's statements were exaggerated, pointing to his statement that while he was with Mother, "dog(s) would bite him." However, it is not clear from this report of Marcus's statement whether he was referring to multiple dog bites. Further, Marcus showed Santiago a scar on his left wrist he indicated was from a dog bite.

Mother also contends Marcus's statement he "got his ass busted" for being in a basket that fell was unreliable because there was no evidence Mother placed Marcus in a basket or tipped it over. But this statement was made in reference to his having a scar above his left eye, and he never claimed it was Mother who tipped him over. Even if the injury was not caused by Mother, the basket incident does not show Marcus's statements that "mother whoops me with a belt and cords" and hits him in the face were unreliable.

Finally, Mother contends the prior referrals were closed because there were no bruises or marks to substantiate the physical abuse claims. Although it is true Marcus did not have bruises or marks on him when examined, the lack of bruises or marks does not mean Mother did not physically abuse him on those occasions, in the DPSS office in 2018, or on other occasions. Further, as discussed, "[t]he court need not wait until a child is abused or injured to assume jurisdiction and take steps necessary to protect the child." (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 165; accord, *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1383.)

## **DISPOSITION**

We affirm the jurisdictional findings and dispositional order.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.